

COPY

RECORDATION NO. 13892-A

AMENDMENT NO. 4

SEP 1 1989 - 9 50 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 4, dated and effective as of January 1, 1989, between BRAE Transportation, Inc., successor to BRAE Corporation ("BRAE"), 160 Spear Street, Suite 1600, San Francisco, California 94105 and Little Rock & Western Railway Corporation, P.O. Box 386, Perry, Arkansas, 72125 ("Lessee").

RECITALS

A. Pursuant to the Lease Agreement dated as of October 11, 1982, as amended by an Amendment No. 1 dated April 25, 1983, an Amendment No. 2 dated March 30, 1984, and an Amendment No. 3 dated December 28, 1984 (the "Lease Agreement"), BRAE is currently leasing three hundred seventy-seven (377) boxcars to Lessee.

B. BRAE and Lessee now desire to extend the term of the Lease Agreement and to amend certain sections of the Lease Agreement, effective as of the date hereof.

C. In consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENTS

1. Defined Terms. The terms used in this Amendment No. 4 which are defined in the Lease Agreement shall have the same meanings herein as specified therein, except when specifically redefined.

2. Equipment Schedule. The Lease Agreement shall cover those railcars listed and identified in Equipment Schedule No. 7 attached hereto.

3. Amendment to Section 2.A. of the Lease Agreement. The second sentence of Section 2.A. shall be deleted in its entirety and the following new sentence shall be substituted therefore:

"The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3.A. hereof, and shall continue until December 31, 1998."

4. Amendment to Section 3.B. of the Lease Agreement. The following new sentences shall be added to the end of Section 3.B.:

"In the event that BRAE determines, based upon its review of the records, that Lessee is not complying with the intent of this priority loading provision, Lessee shall be liable for and remit to BRAE an amount equal to the number of freight cars loaded in violation of this Section 3.B., multiplied by the product of the daily car hire earnings and the average trip time (in days) for the Cars. The daily car hire earnings shall be computed by use of the applicable per diem and mileage rates determined by the UMLER Hourly and Mileage Car Hire Rate Table (the "Car Hire Table") in effect as of the date hereof, and on the basis of an average of 80 miles of travel per Car per day."

5. **Amendment to Section 4.D. of the Lease Agreement.** The last sentence of Section 4.D. shall be deleted in its entirety and the following new sentence shall be substituted therefore:

"Lessee shall supply BRAE with such reports regarding the use of the Cars by Lessee on its railroad line and Lessee's obligations under this Agreement as BRAE may reasonably request, including daily telephone reports or electronic data transmission of the status of Cars on Lessee's tracks (including daily counts of the total number of serviceable Cars on-line and the individual car numbers of unserviceable Cars on-line and dates such Cars are returned to service), home road interchange records and monthly reports of Lessee's loading activity."

6. **Amendment to Section 5.A. and 5.B. of the Lease Agreement.** The paragraphs contained in Sections 5.A. and 5.B. shall be deleted in their entirety and the following new paragraphs shall be substituted therefore:

"A. Lessee shall use the Cars only in the manner for which the Cars were designated and intended and so as to subject them only to ordinary wear and tear. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Cars during the term of this Agreement, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Further, BRAE shall maintain all Cars in Class A condition as described in Rule 1 of the AAR Interchange Rules. Lessee shall furnish BRAE with original AAR billing repair cards for all repairs made to the Cars by Lessee. Lessee shall, pursuant to the AAR Interchange Rules, inspect all Cars interchanged to it to insure that such Cars are in the condition prescribed by the AAR Interchange Rules for cars received in interchange. Lessee shall also secure from interchanging lines any documentation prescribed by the AAR Interchange Rules for damaged Cars, inform BRAE's Maintenance Department of such damage or reports of damage, and promptly mail any documentation to BRAE. Lessee shall be liable to BRAE for any cleaning, servicing, or repairs required by the AAR Interchange Rules but not noted at the time of interchange. Lessee shall be responsible for the cost to repair Cars which are accepted damaged without defect card protection at Lessee's interchange. Lessee shall promptly report to BRAE any damage or other condition of any Car which Lessee considers will make such Car unsuitable for use. Lessee shall process charges for repairs in accordance with AAR Office Manual Rule 112. Lessee hereby transfers and assigns to BRAE all of its right, title and interest in any warranty with respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided in Section 5.A. hereof, BRAE, at its sole expense, shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required or deemed necessary by BRAE. Upon the request of BRAE, and at BRAE's sole expense, Lessee may perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks at a labor rate not in excess of the average rate charged by private repair shops located within the home state of Lessee. Materials shall be charged at the prevailing AAR rates. Running repairs made by Lessee in accordance with the Interchange Rules shall be made at the same rates as provided above for labor and materials. BRAE shall also make, at its expense, all alterations, modifications, or replacement of parts as shall be necessary to maintain the Cars in good operating condition

throughout the term of the lease of such Cars. Lessee shall not make any alterations, improvements or additions to the Cars without BRAE's prior written consent. Further, Lessee agrees that BRAE will be responsible for designating the repair facility for damaged Cars which are subject to defect cards issued by railroads and, except for running type repairs, for work classified as owner's responsibility, and that BRAE shall have full control over the performance and acceptance of such repair work, and that should Lessee fail to comply with this provision, Lessee shall then be responsible for the payment of any and all unauthorized repairs performed and any repairs performed by repair facilities not designated by BRAE. Lessee agrees to transport, at no charge to BRAE, Cars in need of repair to designated shops on Lessee's tracks or to designated interchange for shops not on Lessee's tracks. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration and any costs incurred to make such alteration and any costs reasonably incurred by BRAE to restore any Car to its condition prior to such Lessee change. Title to any such alteration, improvement or addition shall be and remain with BRAE."

7. **Amendment to Section 5 of the Lease Agreement.** The following new paragraph shall be added to the end of Section 5:

"E. In the event Lessee removes defective hydraulic end of car cushioning units, Lessee will obtain replacements from BRAE and defective units will be returned to locations designated by BRAE, except that Lessee shall not be required to hold up movement or transfer cars, and, accordingly may replace up to two (2) such defective hydraulic units in-kind per year, from its own material stock. Furthermore, Lessee shall not be obligated to obtain replacements from BRAE and is free to make replacements itself, if it replaces any such defective unit with a Model E-10 SGR/C unit manufactured by Keystone Railway Equipment Company. As to such units replaced by Lessee, BRAE shall have the option to replace the unit(s) in Lessee's inventory in lieu of reimbursing Lessee's material charge. All transportation costs associated with the replacement of such hydraulic units by BRAE and their return to BRAE by Lessee shall be borne by BRAE."

8. **Amendment to Section 6.A. of the Lease Agreement.** The paragraph contained in Section 6.A. shall be deleted in its entirety and the following new paragraph shall be substituted therefore:

"A. BRAE and Lessee agree that the Cars will be free of all car hire charges while on Lessee's railroad tracks. BRAE shall collect all car hire (including time and mileage) payments made to Lessee by other railroad companies for their use and handling of the Cars ("Car Hire Payments"). BRAE shall pay to Lessee, with respect to each day that any Car is earning Payments (as that term is defined below), the sum of \$3.00 per day with respect to each such Car. The total number of days for which Payments are earned by the Cars shall be calculated by dividing the aggregate number of hours for which per diem payments ("Per Diem Payments") are earned by 24. Fractional days shall be prorated at the rate of \$3.00 per full day. Provided however, if in any calendar month, Utilization (as hereinafter defined) is less than 55%, BRAE shall retain 100% of Per Diem Payments collected with respect to such period and shall not be required to make the \$3.00 per day payment. BRAE shall retain 100% of all mileage payments collected. Sums due Lessee hereunder from BRAE shall be paid monthly in arrears within 70 days after the end of each calendar month in which such sums are earned."

9. Amendment to Section 6.E. of the Lease Agreement. The paragraph contained in Section 6.E. shall be deleted in its entirety and the following new paragraph shall be substituted therefore:

"E. If at any time BRAE determines that Utilization (as hereinafter defined) was less than 70% during the previous three (3) calendar months, BRAE may, upon ten (10) days written notice to Lessee, withdraw from this Agreement that number of Cars such that Utilization of 70% would have been achieved by the remaining Cars during such previous three (3) calendar months. If, during such ten (10) day notice period, Lessee elects to pay to BRAE the difference between the amount of revenue (time and mileage) which the Cars would have earned if their Utilization was equal to 70% during such previous three (3) calendar months, and the amount of revenue (time and mileage) which the Cars did actually earn during such previous three (3) calendar months (the "Make-up Amount"), BRAE shall be precluded from withdrawing any Cars from this Agreement pursuant to this Section 6.E. For purposes of determining the amount of revenue which the Cars would have earned if Utilization was equal to 70% during any period, daily car hire earnings shall be computed by use of the applicable per diem and mileage rates determined by the Car Hire Table in effect as of the date hereof, and on the basis of an average of 80 miles of travel per Car per day. For the purpose of determining Utilization, "Car Hour" shall mean one hour during which one Car is on lease hereunder, commencing as of the date hereof. The term "Utilization" shall mean, with respect to any period, a fraction, the numerator of which is (x) the aggregate number of Car Hours for which Payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Hours during such period."

10. Limitation. Except as amended herein, the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 4 as of the date first written above.

BRAE TRANSPORTATION, INC.

By

Printed Name

Title

Date

LITTLE ROCK & WESTERN RAILWAY
CORPORATION

By

Printed Name

Title

Date

EQUIPMENT SCHEDULE NO. 7

BRAE Transportation, Inc., successor to BRAE Corporation ("BRAE") hereby leases the following railcars to Little Rock & Western Railway Corporation ("Lessee"), pursuant to that certain Lease Agreement dated as of October 11, 1982, as amended (the "Agreement").

<u>Number of Cars</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>	<u>Car Markings and Car Number(s)</u>	<u>BRAE Code</u>
377	50'6", 70-ton Single Sliding Door Boxcars	XM/XP	LRWN 1001-1025 (25)	450
			1141-1150 (10)	430
			1151-1177 (26)	450
			1201-1250 (50)	340
			1301-1342 (41)	610
			2001-2179 (179)	600
			3245 (1)	490
			5000, 5002, 5005 (3)	610
			5009-5011 (3)	610
			5017, 5019, 5023 (3)	610
			5025, 5027, 5029 (3)	610
			5031, 5033, 5035 (3)	610
			5039, 5041, 5042 (3)	610
			5045, 5046, 5048 (3)	610
			5051-5053 (3)	610
			5056, 5061, 5063 (3)	610
			5065, 5066 (2)	610
			5068-5071 (4)	610
			5077, 5078 (2)	610
			5081, 5084-5086 (4)	610
			5088, 5089 (2)	610
			5092-5094, 5099 (4)	610

NOTE: LRWN #1157 destroyed 10/08/85
LRWN #1315 destroyed 08/04/88

BRAE and Lessee hereby agree that this Equipment Schedule No. 7 shall supercede Equipment Schedules No. 1-6 and such Equipment Schedules No. 1-6 shall become null and void as of the date hereof.

BRAE and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Agreement in this Equipment Schedule No. 7.

IN WITNESS WHEREOF, the parties hereto have executed this Equipment Schedule No. 7 as of the 22 day of December, 1988.

BRAE TRANSPORTATION, INC.

**LITTLE ROCK & WESTERN RAILWAY
CORPORATION**

By Charles D. Littlejohn

By Mr. H. C. C. C. C.

Printed Name Donald B. Hekel

Printed Name Lec. N Crowder

Title President - RAIL DIVISION

Title President

Date December 27, 1988

Date December 22 1985

STATE OF WISCONSIN)
COUNTY OF BROWN) ss.

On this 5th day of January, 1989, before me personally appeared Leon Cronley, to me personally known, who being by me duly sworn, did depose and say that such person is President of Little Rock & Western Railway Corporation, and that the foregoing Amendment No. 4, and Equipment Schedule No. 7 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

B. L. L. L.

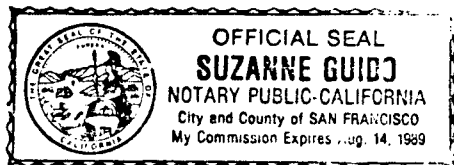
Notary Public

My Commission Expires January 26, 1992

[seal]

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

On this 22 day of December, 1988, before me personally appeared Dennis B. Littlefield, to me personally known, who being by me duly sworn says that such person is President of BRAE Transportation, Inc., and that the foregoing Amendment No. 4, and Equipment Schedule No. 7 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.



[seal]

Suzanne Guido
Notary Public

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STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE

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ROBERT J. CORBER
(202) 429-8108

August 31, 1989

RECORDATION NO. 13892-A
FILED 1423

SEP 1 1989 -9 50 AM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. § 11303 are one original and four copies of the document hereinafter described. It relates to the railroad equipment identified below.

1. Amendment No. 4 dated as of January 1, 1989, between BRAE Transportation, Inc., lessor, and Little Rock & Western Railway Corporation, lessee.

Consent of Mrs. Kilgore

The equipment subject to this document consists of 377 boxcars bearing the marks LRWN 1001-1025, 1141-1150, 1151-1177, 1201-1250, 1301-1342, 2001-2179, 3245, 5000, 5002, 5005, 5009-5011, 5017, 5019, 5023, 5025, 5027, 5029, 5031, 5033, 5035, 5039, 5041-5042, 5045-5046, 5048, 5051-5053, 5056, 5061, 5063, 5065, 5066, 5068-5071, 5077-5078, 5081, 5084-5086, 5088, 5089, 5092-5094, and 5099, inclusive.

The names and addresses of the parties to the document are as follows:

Consent of Mrs. Kilgore

Lessor: BRAE Transportation, Inc.
One Hundred Sixty Spear Street
San Francisco, CA 94105

Lessee: Little Rock & Western Railway
Corporation
P.O. Box 386
Perry, AR 72125

Please file and record the document with indexing under the foregoing names. Since this is a secondary document related to the Lease Agreement recorded under Recordation Number 13892,

Ms. Noreta R. McGee
August 31, 1989
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it is requested that this document be given the next available letter designation under Recordation Number 13892.

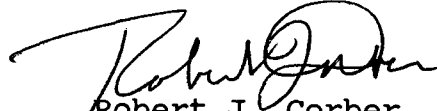
This document is also related to the Equipment Lease recorded under Recordation Number 11241, the Equipment Trust Agreement recorded under Recordation Number 9875, and the Equipment Trust Agreement recorded under Recordation Number 10630. It is, therefore, requested that the document be CROSS-INDEXED under Recordation Numbers 11241, 9875 and 10630.

A fee of \$52.00 is enclosed for the recordation and the cross-indexing. Please return the original and any extra copies not needed by the Commission for recordation to the person presenting this letter.

A short summary of the document to appear in the index follows:

1. Amendment No. 4 dated as of January 1, 1989 between BRAE Transportation, Inc., lessor, and Little Rock & Western Railway Corporation, lessee, for railcars marked as shown in the document.

Very truly yours,



Robert J. Corber
Attorney for
Brae Transportation, Inc.

RJC:smg

Enclosures